

## REMARKS

Claims 1, 6-16 and 21-33 are pending and stand finally rejected. This communication amends claims 1, 3, 5, 16, 18, 20, and 29, and cancels claims 2 and 17.

It is noted that claims 2-5 and 17-20 contain patentable subject matter. In response, independent claim 1 has been amended with the patentable subject matter of canceled claim 2, and now recites "...a hard phase material *arranged in particle aggregates...*," and independent claim 16 has been amended with the patentable subject matter of canceled claim 17, and now recites "...a hard phase material *arranged in particle aggregates...*." Claim 29 has been amended with the subject matter indicated to be patentable in claims 2 (or claim 17) and now recites "...micron-scale particles of a hard phase material *arranged in particle aggregates* fused together with the binder phase material..."

Claims 16 and 21-27 stand finally rejected under 35 USC 102(b) as being anticipated by US Patent 5120693 to Connolly *et al.* (Connolly).

This rejection is moot in view of the addition of the patentable subject matter of canceled claim 17 to independent claim 16. Accordingly, withdrawal of the 35 USC 102(b) rejection using Connolly is respectfully requested.

Claims 1, 6-15 and 28-33 stand finally rejected under 35 USC 103(a) as being unpatentable over Connolly as applied to claims 16 and 21-27 above, and further in view of WO 97/18341 (the '341 document).

This rejection is moot in view of the addition of the patentable subject matter of canceled claim 2 to independent claims 1 and 29. Accordingly, withdrawal of the 35 USC 103(a) rejection using Connolly in view of the '341 document is respectfully requested.

Applicants' reserve to the right to file a continuation application with claims 1, 6-16, and 21-33, as set forth in the amendment filed on June 18, 2003, because the basis for the final rejection of claims 1, 6-16 and 21-33 is flawed. The Office Action states in the "Response to Arguments" section that "While applicant has defined 'aggregate' as 'clusters of bonded particles that cannot be easily separated from one another by mechanical means' (page 6, last paragraph) and 'agglomerate' as 'capable of being mechanically separated' (page 7, first paragraph), and applicant may be his own lexicographer, this definition only applies to applicant's disclosure. Therefore, the mere fact that Connolly uses the term agglomerate does not necessarily mean that agglomerates within applicant's definition are provided".

According to MPEP 2111.01, during examination, the claims must be given their plain meaning unless applicant has provided a clear definition in the specification. See also *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). A clear definition is provided for the claim term "aggregating" in applicants' specification, which states on page 6 that aggregated particles are "clusters of bonded together particles that cannot be easily separated from one another by mechanical means," and on page 7 that "Agglomerated particles differ from aggregated particles in that they are capable of being mechanically separated from one another." The Office Action's refusal to give the term "aggregating" the clear meaning provided in applicant's specification is improper.

The Office Action further states that "The plain meaning of agglomerate would be 'to gather into a ball, mass or cluster' or 'a jumbled mass or collection'; and aggregate would be 'to collect or gather into a mass or whole' (Webster's Ninth New Collegiate Dictionary, 1990, page

64). Thus, even though Connolly uses the term agglomerate, an aggregate as defined by applicant could be provided”.

Arguably, even if the Applicants’ specification had not provided a clear definition in the specification for the claim term “aggregating,” the “plain meaning” afforded this term in the Office Action is improper as it has been obtained from a non-technical Dictionary, and not from those of ordinary skill in the art, as required by MPEP 2111.01.

Favorable reconsideration of this application is respectfully requested as it is believed that all outstanding issues have been addressed herein and, further, that claims 1, 3-16, and 18-33 are in condition for allowance, early notification of which is earnestly solicited. Should there be any questions or matters whose resolution may be advanced by a telephone call, the examiner is cordially invited to contact applicants’ undersigned attorney at his number listed below.

No fee is believed to be required for this communication. The Commissioner is hereby authorized to charge payment of any additional filing fees required under 37 CFR 1.16 and any patent application processing fees under 37 CFR 1.17, which are associated with this communication, or credit any overpayment to Deposit Account No. 50-2061.

Respectfully submitted,

  
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PTN38336.1